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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM H. WHITTED

Appeal 2009-009716
Application 10/675,233
Technology Center 3600

Before JENNIFER D. BAHR, LINDA E. HORNER and JOHN C. KERINS,
Administrative Patent Judges.

KERINS, *Administrative Patent Judge.*

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

William H. Whitted (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-25. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellant's invention is directed to a shelf support system providing access to components of a rack mount computing system. Claim 1, reproduced below, is illustrative:

1. A system providing access to components of a rack mount computing system, comprising:

a slidable electronics module shelf having a front shelf end and a rear shelf end, the shelf including an electronics components region and a rear catch mechanism at the rear shelf end, the rear catch mechanism includes at least one pivot; and

a pair of opposing electronics module guides to support and guide the shelf relative thereto, the guides having a front guide end and a rear guide end, each guide including a track to support and guide the shelf thereon, the guides further including a pivot support disposed at the front guide end and configured to engage the pivot of the rear catch mechanism at the rear shelf end of the shelf, whereupon the shelf is pivotable about the pivot, the pivot being supported by the pivot support of the guides such that when the front shelf end of the slidable electronics module shelf is lowered relative to the rear shelf end of the slidable electronics module shelf, the electronics module guides substantially support the slidable

electronics module via the at least one pivot of the rear catch mechanism.

THE REJECTIONS

The Examiner has rejected claims 1-12 and 14-24 under 35 U.S.C. § 102(b) as being anticipated by Drake (US 4,931,978, issued June 5, 1990). The Examiner has additionally rejected claims 13 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Drake.

ISSUE

Whether the Examiner erred in finding that Drake discloses pivot supports on a pair of electronics module guides that support a slidable electronics module shelf via pivots provided as a part of a rear catch mechanism, when the front end of the shelf is lowered relative to the rear end of the shelf?

ANALYSIS

Appellant spends much of the Appeal Brief, and particularly the Reply Brief, arguing that Drake does not disclose the claimed pivot. Appellant contends that “a pivot occurs at a fixed or anchored point, rather than a freely rotatable point, such as the axle of roller 82 positioned at the free-end of the drawer [in Drake]”. (Reply Br. 4). Neither the Specification nor the common and ordinary meaning of the term “pivot” requires such a restrictive meaning for the term.

Appellant does not refer to the claimed “pivot” by that term in the Specification, instead calling it a “catch”, which “may be a pin or a plug”. (Spec. 8, para. [0028]). Appellant later describes that “the pins 48 supported

by the pin support and stop 24 [may be used] as a pivot.” (Spec. 10, para. [0032]). Appellant describes what is meant by “pivoted”, stating that this means that the shelf is “tilted down such that the electronics module shelf 40 faces toward the front of the rack mount system.” (Spec. 9, para. [0028]). An apt common and ordinary meaning of “pivot” when used as a noun is, “a pin, point, or short shaft on the end of which something rests and turns, or upon and about which something rotates or oscillates”. COLLINS ENGLISH DICTIONARY--COMPLETE AND UNABRIDGED 10TH EDITION (2009), accessed at <http://dictionary.reference.com/browse/pivot> (last viewed on March 14, 2011). Neither Appellant’s terminology nor the dictionary definition requires that the pivot remain at a fixed or anchored point. For example, the axle around which roller 82 in Drake rotates is capable of allowing track assembly 84 and shelf 30 to pivot therearound even as, according to Appellant, “that axle moves constantly upward in an arc over roller 75” when the drawer is fully extended and tilted downward. (*See* Reply Br. 4).

Notwithstanding that we are not persuaded by the above facet of Appellant’s arguments, independent claim 1 calls for the “electronics module guides [to] substantially support the slidable electronics module [shelf] via the at least one pivot of the rear catch mechanism.” (Appeal Br. 18, Claim Appendix). Independent claim 14 has a similar limitation. Appellant contends that “if the drawer unit 30 [of Drake] were slid forward and released, it would tilt down, roller 84 [sic, 82] would ride up over the top of stop member 75 (because stop member 75 would push on the horizontally extending flange of track assembly 82), and the drawer unit 30 would fall off”, and “because roller 82 moves up and over roller 75, the

drawer in *Drake* ultimately falls out of the guides”. (Appeal Br. 11-12; Reply Br. 4-5).

A common and ordinary meaning of “support” is “to carry the weight of”. COLLINS ENGLISH DICTIONARY--COMPLETE AND UNABRIDGED 10TH EDITION (2009), accessed at <http://dictionary.reference.com/browse/support> (last viewed on March 14, 2011). Appellant describes that, “the electronics module shelf 40 hangs from and is substantially supported by the electronics module guide 20 via the pins 48”. (Spec. 9, para. [0028]). While it appears that Appellant’s scenario in which the drawer unit of Drake falls out of the guides if released at its forwardmost extent would depend to an extent on the weight of the drawer and any components maintained thereon, as well as the weight distribution fore and aft of the pivot of roller 82, it is a plausible and thus possible scenario. As such, there exists at least some doubt that the guides 70 of Drake, including stop member 75, would operate to support the drawer unit/shelf when the front of the shelf is lowered relative to the rear end of the shelf, as required by the claims.

The rejection is one based on anticipation by Drake. We do not see any explicit disclosure that the guides 70 of Drake will support the drawer unit 30 when the front of the unit is lowered relative to the rear of the unit. Furthermore, the possibility that the guides would not support the drawer unit also means that there is only a possibility that the guides *would* support the drawer unit. That feature is thus not inherently disclosed by Drake. *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981)(inherency may not be established by probabilities or possibilities).

As such, we are constrained to reverse the rejection of claims 1-12 and 14-24 as anticipated by Drake. The obviousness rejection of claims 13

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and 25 is premised, in this regard, on the same findings as are the anticipation rejection. That rejection will also not be sustained.

CONCLUSION

The Examiner erred in finding that Drake discloses pivot supports on a pair of electronics module guides that support a slidable electronics module shelf via pivots provided as a part of a rear catch mechanism, when the front end of the shelf is lowered relative to the rear end of the shelf.

DECISION

The decision of the Examiner to reject claims 1-25 is reversed.

REVERSED

JRG

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